

LETTER OPINION
94-L-223

August 25, 1994

Mr. Charles R. Isakson
Mercer County State's Attorney
P.O. Box 39
Stanton, ND 58571-0039

Dear Mr. Isakson:

Thank you for your July 18, 1994, letter asking, on behalf of Robert E. Alexander, attorney for the Beulah School District No. 27, several questions concerning election of school board members and the requirements for rural membership on school boards.

Your first question relates to increasing the number of board members on a school board. You indicate that the voters approved expanding the number of school board members from five to seven. You ask whether N.D.C.C. ? 15-28-01(2) may be interpreted to allow the election of the additional members to be held before the next annual school district election. N.D.C.C. ? 15-28-01(2) provides, in part, "[i]f approved, the additional members must be elected to the board at the next annual school district election in the same manner as other school board members."

Generally, the law is what the Legislature says, not what is unsaid:

It must be presumed that the Legislature intended all that it said, and that it said all that it intended to say. The Legislature must be presumed to have meant what it has plainly expressed. It must be presumed, also, that it made no mistake in expressing its purpose and intent. Where the language of a statute is plain and unambiguous, the "court cannot indulge in speculation as to the probable or possible qualifications which might have been in the mind of the legislature, but the statute must be given effect according to its plain and obvious meaning, and cannot be extended beyond it."

Mr. Charles R. Isakson
August 25, 1994
Page 2

Little v. Tracy, 497 N.W.2d 700, 705 (N.D. 1993) (citing City of Dickinson v. Thress, 69 N.D. 748, 290 N.W. 653, 657 (1940)).

It must be presumed that at the time of a legislative enactment the Legislature was cognizant of the common and ordinary meaning attached to the language it uses. Kiner v. Well, 71 N.W.2d 743, 748-49 (N.D. 1955). Words used in any statute are to be understood in their ordinary sense, unless a contrary intention plainly appears, but any words explained in the code are to be understood as thus explained. N.D.C.C. ? 1-02-02.

Annual and special elections for school boards are unique and separate events. The school district annual election is specifically provided for by N.D.C.C. ? 15-28-03 wherein the subjects of "annual election" and "special election" are dealt with separately and where "a special election" is provided for in addition to "the annual election." Had the Legislature intended to permit election of board members made necessary by a vote of the electors to increase the number of school board members, either at a special election or at the annual election, then it could have provided that option. It is therefore my opinion that N.D.C.C. ? 15-28-01(2) providing for the election of additional members at the next annual school district election means the annual election provided for by N.D.C.C. ? 15-28-03(1) to be held between April 1 and June 30 of each year, and at no other election.

Your next question is whether you may consider commercial and industrial property located outside of city limits as "non-rural property" under N.D.C.C. ? 15-28-02 for purposes of determining taxable valuation of the rural area of the school district to be compared to the urban area of the school district to determine the majority membership required on the school board.

N.D.C.C. ? 15-28-02 states, "if the taxable valuation of the rural area of a school district containing a city is

Mr. Charles R. Isakson
August 25, 1994
Page 3

greater than the taxable valuation of the urban area of the district, the majority of the members of the school board shall reside upon farms outside the corporate limits of the city. . . ." (Emphasis supplied.) N.D.C.C. ? 15-28-02 does not define the terms "rural" or "urban" and, therefore, it must be presumed that the Legislature was aware of the common and ordinary meanings of those terms when it used them in the statute. Although the terms are defined for an isolated purpose in N.D.C.C. ? 10-30.3-01 concerning North Dakota Future Fund activities, those definitions are irrelevant to N.D.C.C. ? 15-28-02. The common and ordinary meaning of the term "rural" is "[c]oncerning the country, as opposed to urban (concerning the city)." Black's Law Dictionary 1334 (6th ed. 1990). Similarly, the word "urban" means "[o]f or belonging to a city or town. Within city limits." Black's Law Dictionary 1540 (6th ed. 1990).

It is therefore my opinion that the terms "rural" and "urban" relate to whether the property is within or without the limits of an incorporated city, and do not relate to the zoning or land use of the property in question. Consequently, it is my further opinion that, under N.D.C.C. ? 15-28-02, urban property means the property within the limits of incorporated cities and rural property means the property outside the limits of incorporated cities.

Your third question asks whether the language in N.D.C.C. ? 15-28-02, stating "the majority of the members of the school board shall reside upon farms outside the corporate limits of the city", means that persons must reside upon farms, and, if so, how to define "farm." Again, the Legislature did not define the term "farm" in this section. The term is described for real property taxation purposes in a highly specialized way in N.D.C.C. ? 57-02-08(15)(b)(1). That definition is not useful for school board membership purposes under N.D.C.C. ? 15-28-02 because the two statutes involved are not similar and the definition is provided for a unique purpose. State v. Johnson, 417 N.W.2d 365, 369 (N.D. 1987).

Reading N.D.C.C. ? 15-28-02 as a whole, it appears that the distinction which the Legislature has made in defining rural school board members rests more with

Mr. Charles R. Isakson
August 25, 1994
Page 4

their residing outside of the city limits than with the use of the land upon which they reside. This is evidenced by the declaration that "school board members must be considered as rural members and as residing upon a farm if they reside within a city . . . [having] a population of two hundred or less and . . . located within a school district that has four or more incorporated cities within its boundary." N.D.C.C. ? 15-28-02. (Emphasis added.) While this mandate is not effective when the school district contains fewer than four incorporated cities, it is relevant to show that the main concern is with the representation of the rural community and not merely with representatives of farm families. Further, each time within this section residence upon a farm is referred to it is limited to a farm outside the corporate limits of the city. For these reasons it is my opinion that for purposes of N.D.C.C. ? 15-28-02, residing upon a farm outside the corporate limits of a city should be interpreted as residing outside of the city limits of a city regardless of the use of the land surrounding the residence. This interpretation is consistent with that proposed by then Chief Deputy Attorney General Gerald W. VandeWalle in his May 18, 1976, letter to Mr. Herman Doeling.

I am enclosing for your information a copy of a letter opinion from former Attorney General Nicholas J. Spaeth to Senator Bryce Streibel dated August 14, 1991, concerning election of rural residents and duties of school boards acting as canvassing boards. This information may be useful to the school board and to you when conducting future elections for school board membership.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

pg

Enclosure

cc: Robert E. Alexander, Attorney at Law
Tom Decker, Department of Public Instruction